20-375

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~423~~ ~~188 29~~ 8

FRED. T. PERRIS, SURVIVING PARTNER OF GEORGE CRONYN AND FRED. T. PERRIS, AS GEORGE CRONYN AND COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM G. HIGLEY, J. F. NOUNNAN, AND JOSEPH F. PHIPPIN.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED NOVEMBER 27, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 423.

FRED. T. PERRIS, SURVIVING PARTNER OF GEORGE CRONYN AND FRED. T. PERRIS, AS GEORGE CRONYN AND COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM G. HIGLEY, J. F. NOUNNAN, AND JOSEPH F. PHIPPIN.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Complaint	9	3
Summons	11	4
Answer	13	4
Replication	22	8
Verdict	26	9
Exceptions	37	13
Notice of appeal	38	14
Bond	40	14
Certiorari	42	15
Judgment of supreme court	46	16
Assignment of errors	47	17
Clerk's certificate	49	17
Bond	50	18

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the Territory of Utah, greeting:

Because in the records & proceedings, as also in the rendition of a judgement in a plea which is in said court for the trial of impeachments and the correction of errors, before you, between Fred. T. Perris, surviving partner of George Cronyn & Fred. T. Perris, partners in business by the style of George Cronyn & Co., *were* appellants, and William G. Higley, Joseph F. Nounnan, and Joseph F. Phippin, were appellees, a manifest error hath happened, to the great damage of the said appellants as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, & full & speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgement be therein given, that then, under your seal, dis-
2 tinctly and openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington on the 4th day of December next, in the Supreme Court, to be then & there held, that the records and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and the custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourth day of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the 96th.

[SEAL.]

C. MYRON HAWLEY,
Clerk of the Supreme Court of Utah Territory.
By BENTHAM FABIAN,
Deputy.

2½ (Indorsed:) Supreme Court of United States. Fred. T. Perris, surviving partner, &c., vs. William G. Higley et al. Writ of error.

3 UNITED STATES OF AMERICA, *ss:*

To William G. Higley, Joseph F. Nounan, and Josehh F. Phippin, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Utah, wherein Fred. T. Perris, surviving partner of George Cronyn and Fred. T. Perris, partners in business by the style of George Cronyn & Co., is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgement in said court should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honourable *James B. McKean*, Chief Justice of the said Supreme Court of the United States, this 4th day of November, in the year of our Lord 1871.

JA'S B. McKEAN,
Chief Justice, &c.

4 (Indorsed:) Supreme Court of the United States. Fred. T. Perris, surviving partner, etc., vs. William G. Higley et al. Citation.

I hereby acknowledge that service of the within citation was this day made on me.
November 10th, 1871.

ROBERT N. BASKIN,
Att'y for Appellees.

5 TERRITORY OF UTAH:

Supreme Court.

Be it remembered that at a supreme court held on the 14th day of March, A. D. 1871, at the court-house in the city and county of Salt Lake, in the Territory of Utah—

Present, the Honorables James B. McKean, chief justice; C. M. Hawley and O. F. Strickland, associate; C. M. Hawley, clerk; M. T. Patrick, marshal; C. H. Hempstead, U. S. district attorney.

In the records and proceedings of said court, among other things, are the following:

GEORGE CRONYN ET AL.
vs.
W. G. HIGLEY ET AL.

On the 6th day of June, A. D. 1870, came George Cronyn and Fred. T. Perris, by Z. Snow, their attorney, and filed in the clerk's office of this court a transcript, duly certified, from the district court of
6 the 3rd judicial district of this Territory, in a case lately by said court determined, wherein the said George Cronyn and Fred. T. Perris, partners in trade by the style of George Cronyn & Co., were defendants in error, and William G. Higley, Joseph F. Phippin, and Joseph F. Nounnan were plaintiffs in error, which transcript is in the words and figures following, to wit:

TRANSCRIPT.

7 W. G. HIGLEY ET AL.
vs.
GEORGE CRONYN ET AL.

At a district court begun and held at the court-house in Salt Lake City, in the county of Salt Lake, within & for the third judicial district of the Territory of Utah, on the 16th day of May, A. D. 1870, among the records & proceedings of said court are the following, viz:

W. G. HIGLEY ET AL.
vs.
GEORGE CRONYN ET AL.

Certiorari to the probate court of Salt Lake City, Nov. 18th, 1868.

On the application of the said W. G. Higley et al, who appeared by

O. F. Strickland, their attorney, the court made the following orders, viz:

W. G. HIGLEY ET AL.
vs.
CRONYN & CO.

In appeal from the probate court of Salt Lake County.

W. G. Higley, through his attorneys, Strickland & Robertson, filed application for an order to the probate court to transmit all
8 papers in this case, & asked for an order to prevent the issuance of execution from said court in the case where Cronyn & Co. were plaintiffs, & W. G. Higley et al. were defendants. O. F. Strickland, esq., raised an objection to the jurisdiction of the probate court, and the final argument set for Friday, the 20th inst., at 2 p. m.

Nov'r 20th, 1868: Ordered, that the case be brought up in writ of certiorari, and that appellants file their bond within ten days from date if they seek to stay execution; and it was further ordered and adjudged by the court, that the said W. G. Higley & Co. pay the costs in this behalf expended, taxed at fifteen $\frac{50}{100}$ dollars, and that execution issue therefor.

Afterwards, on the 30th day of Nov'r, 1868, came E. W. East, clerk of the probate court of said Salt Lake County, & filed a transcript of the said case, which is in the words and figures following, viz:

Transcript from probate court of Salt Lake County.

9 Transcript in appeal from the probate court of Salt Lake County, U. T., in the case of Cronyn & Co. vs. W. G. Higley et al.

Complaint.

The plaintiffs in this case, George Cronyn & F. T. Perris, merchants, trading and doing business in Great Salt Lake City, U. T., under the name & firm-style of Cronyn & Co., complain of the defendants, W. G. Higley, J. F. Phippin, and J. F. Nounnan, and for cause say; that heretofore, to wit, at Great Salt Lake City, Utah Territory, the defendants made their certain promissory note, dated April, 18th 1867, in words & figures following, to wit:

$1,500.00.] SALT LAKE CITY, *April 18th*, 1867.

[Int. rev. stamp, 75 cents, cancelled]

On or before the 30th day of October next, for value received, we jointly & severally promise to pay to the order of George Cronyn
10 & Co., the sum of fifteen hundred dollars, with interest from the first of June, 1867, at the rate of two per cent. per month.

(Signed) W. G. HIGLEY.
" JO. F. PHIPPIN.
" JO. F. NOUNNAN.

And then & there delivered the said note to the said plaintiffs. That there is a credit to be applied on said note of sixty-five dollars and eighty-four cents, ($65.$\frac{84}{100}$,) which leaves a balance due the plaintiffs of fourteen hundred & thirty-four dollars and sixteen cents, ($1,434.$\frac{16}{100}$,) which is due and unpaid, and for which plaintiffs ask judgement, with

interest thereon from the said first day of June, at the rate of two per cent. per month, together with ten per cent. per annum as damages for the non-payment thereof.

(Signed) FRED. T. PERRIS,
One of the Plaintiffs.

TERRITORY OF UTAH,
G. S. L. County, ss:

Fred. T. Perris, one of the plaintiffs above named, being duly sworn, says that the statements and allegations made in the foregoing
11 complaint are true, of his own knowledge, except as to matters stated on information and belief, and as to such matters he believes them to be true.

(Signed) FRED. T. PERRIS.

Sworn to & subscribed before me this 6th day of Jan'y, 1868.
(Signed) E. W. EAST, *Pro. Clerk.*

Filed Jan'y 6th, 1868.
(Signed) E. W EAST, *Pro. Clerk*

Summons.

In the probate court for said county, December term, 1868. Hon. Elias Smith, judge.

TERRITORY OF UTAH,
G't Salt Lake County, ss:

CRONYN & Co.
vs.
W. G. HIGLEY, JO. F. NOUNNAN, AND JO. F. Phippin. } Demand, $1,434 16/100, int. & damages.

To the sheriff of said county, or his deputy, greeting:

Whereas complaint has been filed in this court by the plaintiffs, Cronyn & Co., setting forth that the defendants are jointly
12 indebted to them in the sum of fourteen hundred and thirty-four 16/100 dollars with interest and damage claimed:

These are therefore to command you to summon the said defendants to appear before this court, at the court-house in Great Salt Lake City, on the 17th day of January, instant, at 10 o'clock, a. m., to answer said complaint and show cause, if any there be, why judgment should not be entered against them for said demand & costs of suit.

Hereof fail not & make due returns of this writ.

Given under my hand and seal of said court this 6th day of January, A. D. 1868.

[L. S.] (Signed) E. W. EAST, *Pro. Clerk.*

13 *Answer.*

In probate court G't Salt Lake County.

CRONYN & Co.
vs.
W. G. HIGLEY ET AL.

Now come the said defendants by their attorneys, Strickland & Rob-

inson, and R. N. Baskin, & for answer to the complaint on file in this cause they answer and say:

They admit that they made and delivered to the said plaintiffs the note described in the said complaint; but they deny that there is the amount due upon the same claimed by the said plaintiffs; and they further say that the said note was made & delivered by them as a part payment of the purchase of a Blandy's twenty horse-power engine, & saw-mill bought by these defendants of Hand F. Blandy, of Zanesville, Ohio, through the above-named plaintiffs, as their agents in Great Salt Lake City, and that the said plaintiffs were made payees in the note nominally in the place of said Hand F. Blandy, and that the purchase of said mill was made upon the memorandum of agreement made
14 by said plaintiffs at the time, a copy of which is attached and made a part of this answer, & upon a large advertising poster of the said Blandy, given to these defendants by said plaintiffs at the time, and which was the basis of the said purchase, & particularly upon that portion of the said poster which warrants their said mills, &c., is as follows:

THE GUARANTEE.

"We guarantee the material and workmanship in all our machinery, & that it shall be in all respects as represented at the time of sale."

And which said poster these defendants will introduce on the trial of this cause. And they allege that by the terms of said agreement the said steam-mill was to be complete in every respect, and fully warranted & delivered at the terminus of the Union Pacific Railroad, & that the said note was given for the balance due on the said steam-mill, and to cover expenses of freight on the same, as appears by said agreement.

And they further say that the said steam-mill was not delivered to them at the terminus of the said railroad as by the terms of said agreement it should have been done, and that these defendants
15 were compelled to go to North Platte, about ninety miles east of the terminus of the said railroad in order to get the said mill.

And at the time the said mill was delivered at North Platte, about the 15th of July, the terminus of the railroad was at Julesburg, and these defendants were greatly delayed, and by reason thereof.

And they further say that they are informed and believe that the charges on the said mill, & which go to make a part of the said note, are unjust and exorbitant, & that the charges for insurance is a matter belonging to the delivery of the mill & cannot be charged to these defendants.

And they further say that said engine & saw-mill, as delivered to them, was not complete in all its parts, nor was the material & workmanship good & proper, as guaranteed by the plaintiffs on the said sale; that a short rubber-pipe called , without which the mill could not be run, was not delivered to them on the delivery of the said mill, & that its absence was not discovered by these defendants until the mill had been received by them & set up for working, and that the said pipe is of the value of , & is not kept for sale in this
16 Territory to the knowledge of these defendants, and that it was only by borrowing such pipe from another steam-mill that these defendants were enabled to use their said mill. And they further say that the exhaust-pipe furnished with the said mill was an old one that had been previously used and damaged by bursting, & open for six or eight inches, & the crevice filled with soft solder in a manner to avoid

detection until the same burst out again while being used in running the mill by these defendants, and that *the* consequence of the bursting said pipe, it was necessary to take the same out of the mill & bring it to the city for repairs, & that the mill could not be run during that time, and the necessary taking apart & putting together of the machinery, and that they were delayed in the use of their said mill, in consequence thereof, for the space of ten days, to their damage of one thousand dollars, as the mill at that time was cutting nine thousand feet of lumber per day, and for which they were receiving the price of sixteen dollars per thousand, under a contract for cutting 500,000 feet of
17 lumber at that price per thousand, & only about 200,000 feet on said contract had been cut at the time of breaking said exhaust-pipe, to wit, about the first day of Nov'r, 1867.

And they further say that in taking said pipe out of its place, by reason of its bursting as aforesaid, it was necessarily broken at one end, because it was an old pipe & could not stand the necessary bending, and a piece was broken off, making the pipe so short that a full head of steam could not be used, and the said mill could only be made to cut about 5,000 feet of lumber per day, whereby they were greatly damaged, & by reason thereof could not fulfil' their said contract, and they were thereby damaged in the sum of five hundred dollars. And these defendants aver that if the said exhaust-pipe had not have bursted as aforesaid, their said mill, during the time necessarily delayed by reason thereof, to wit, ten days, would have earned them the sum of $1,440, less expenses of running the mill, to wit, $430.

And they aver that had said pipe been a new one and sound one, it could not & would not have been broken by the manner in which it was *&* by these defendants, nor by the amount of steam employed
18 to run the mill by these defendants.

And these defendants further say that on about the 20th day of December, 1867, and previous to the commencement of this suit, they caused to be tendered to these plaintiffs the sum of $1,200 in legal-tender currency, in liquidation of the claim of the said note, which was refused by them, and that the said tender was made as a matter of compromise, to avoid litigation, and not as the amount due.

And these defendants ask that the sum of $62.37, charged *as* them for insurance in plaintiffs' bill of items, a copy of which is hereto attached, should be deducted from the amount of the face of said note, and also such a deduction in the item of freight as the proofs in the case will warrant.

And these defendants further ask that they may be allowed a deduction by way of in the sum of fifteen hundred dollars, it being the damage they have sustained by reason of the non-fulfil'ment of the said contract of purchase of said steam saw-mill as aforesaid, & such dam-
age as may be just and proper for their delay, trouble, & extra
19 expense, in getting their said mill from North Platte as aforesaid, & they ask that they may be allowed to recover the sum of two hundred dollars for such damage and delay.

GREAT SALT LAKE COUNTY, *ss:*

W. G. Higley being duly sworn, says that he is one of the above-named defendants, and that the above answer is true of his own knowledge, except as to those things therein stated to be on his information and belief, and as to those he believes them to be true.

(Signed) W. G. HIGLEY.

Sworn to & subscribed before me January 20th, 1868.

E. W. EAST,
Pro. Clerk.

Filed Jan'y 20th, 1868.

E. W. EAST,
Pro. Clerk.

SALT LAKE CITY, *April 18th*, 1867.

For and in consideration of certain promissory notes to us this day given, and which are hereby accepted, subject to the condition below specified, we promise to deliver to Messrs. Higley, Phippin & Co., of Salt Lake City, or their authorized agents, at the terminus of the Union Pacific Railroad, about the 15th day of June next, 1 twenty H. P. Blandy's steam saw-mill, agreeable to their order furnished us.

The conditions being that the amount specified in the note to us for 5 months time, dating from 1st day of June, 1867, shall be subject to charge for more or less amount, and to be governed by our bill of costs furnished us in the east.

(Signed) GEO. CRONYN & CO.

21 *Higley, Phippin & Co., in ac. with George Cronyn & Co.*

One 20 H. P. engine and saw-mill with 56-inch saw, complete, no charge.	
Extra size saw	$2,800 00
2 doz. 14-in. files	24 00
10 lbs. ⅛ gum-packing, 75	7 50
5 " 1/16 " "	3 75
	2,835 25
Fr't to St. Louis, 11,738 lbs., *a* 1.50	176 07
Drayage to boat	20 00
Insurance up river on 3,118.77	62 37
Fr't up river, *a* 50c	58 69
" to North Platte, *a* 2.10	246 50
W. V. B. Riv'r & storing, *a* 20c	23 48
Drop ordering mill	11 80
	3,434 16

CREDITS.

By cash	$2,000 00	
" note, payable Oct. 30th	1,500 00	
		3,500 00
Balance in your favor		65 84

SALT LAKE CITY, *Sept'r* 16, 1867.

22 *Replication.*

TERRITORY OF UTAH, *Salt Lake County:*

Probate court, January 24th, 1868; Hon. Elias Smith, judge.

GEORGE CRONYN & CO. *vs.* W. G. HIGLEY ET AL. } Replication.

Now come the above-named plaintiffs and for replication to the answer of the defendants herein filed, say they admit the following allegations in said answer, viz:

1st. That the note in the complaint and answer mentioned was given in part payment for the machinery in the answer set forth, particularly described in the account rendered & herewith filed.

2nd. That the said H. T. Blandy, for whom these plaintiffs were and are agents, do guarantee the materials & workmanship of their machinery to be in all respects as represented at the time of sale. They now add they were in this sale in all respects as represented at the time of sale & not otherwise.

23 3rd. That these plaintiffs signed the agreement in the answer set forth, dated April 18th, 1867.

4th. That they rendered the account concerning the purchase and transportation of said machinery which accompanys said answer, & they say it is in all respects just & correct, not unjust nor exhorbitant, as alleged.

That it bears date Salt Lake City Sept'r 16th, 1867. No objections were made to it until the filing of the answer herein.

As to the following allegations in said answer, they say—

5th. That said machinery was in good condition on the 15th day of June, 1867, at the North Platte station of the Union Pacific Railroad, which was then its terminus, but the defendants, in person, were not there, *not* by their agents, to receive it. On the 15th day of July, when they actually received it, the terminus of said road had been changed to Julesburg.

6th. They deny that by the terms of the agreement between these plaintiffs, as agents for Hand F. Blandy, & the defendants, relating to the purchase & delivery of said machinery, the machinery was to be delivered at the terminus of the railroad in all respects complete,

24 or in any other condition or time than as mentioned in said written agreement, dated April 18th, 1867, according to its true intent and meaning.

7th. They deny that the rubber pipe referred to in said answer was not delivered to the defendants at the North Platt' station. If, as alleged, it was not to be found when the machinery was put up, it was owing to the carelessness & negligence of defendants or their agents. These plaintiffs add, no notice was given them of its absence. If they had been notified they could & should have supplied its place without regard to the cause of its absence, as they had rubber pipe of that size.

8th. They deny the allegation in said answer that the exhaust-pipe was an old one which had been used and damaged, as alleged, and that in consequence thereof it burst out again in using it; that it had to be taken out, and that in taking it out it broke, as alleged. They add: If anything of the kind had happened, it is owing to the want of care dilligence, and skill on the part of those who have had charge of the

machinery, and not from intrinsic defect in the material of which it was made, nor from any want of care, diligence, or defect of workmanship thereof.

25 9th. As to each & every other allegation in said answer not herein admitted, nor denied, nor explained, or qualified, they say they are statements which, if true, are not within their knowledge. They therefore deny them; & if they, or any part of them, are material, they require proofs thereof, with the exception of the proof that before being damaged it cut 9,000 feet a day.

They deny that the defendants here sustained any damage, as alleged or complained, of defects in the machinery.

(Signed) H. STOUT & Z. SNOW,
Attorneys for Plaintiffs.

I, Fred. T. Perris, make oath and say I have heard the foregoing replication read & know the contents, & that I firmly believe its contents are true in substance and in fact.

(Signed) FRED. T. PERRIS.

Subscribed & sworn to before me this 22d day of January, 1867.
E. W. EAST, *Pro. Clerk.*

Filed Jan'y 22d, 1867.

26 *Venire for jury.*

TERRITORY OF UTAH, *Salt Lake County:*

Probate court for said county. December term, 1867. Hon. Elias Smith, judge.

CRONYN & Co.
vs.
W. G. HIGLEY ET AL.

To the sheriff of said county, or any of his deputies, greeting:

You are hereby commanded to summon twelve good & lawful men, to be & appear before this court, at the court-house in Great Salt Lake City, on Thursday, the 10th day of February, at 10 o'clock a. m., to serve as special jurors in the above-entitled case.

Hereof fail not, & make due returns, with a list of the panel summoned hereto annexed.

Verdict.

SALT LAKE CITY, *February 11th*, 1868.

CRONYN & Co.
vs.
W. G. HIGLEY ET AL.

27 We, the jury in the above case, find for the plaintiffs ($1,600.41,) sixteen hundred and $\frac{41}{100}$ dollars.

(Signed) A. R. WRIGHT, *Foreman.*

Court record.

MAY 11TH, 1868.

10 o'clock a. m. court opened.

The case of Cronyn & Co. vs. W. G. Higley, Jo. F. Phippin, & Jos. F. Nounnan, in assumpsit, was called up.

Counsel for the parties present. Summons returned, served, & by agreement of counsel the case was continued till the 20th inst., by which time the defendants were required to answer.

JANUARY 20TH.

The case of George Cronyn & Co. vs. W. G. Higley et al. was again called up. The defendants filed their answer, and the case was continued till the 22nd inst.

JANUARY 22ND.

The case of Cronyn & Co. vs. W. G. Higley et al. was again called up. Counsel present. The plaintiffs filed their replication, & the case was continued till the 25th inst.

28. JANUARY 25TH.

The case of Cronyn & Co. vs. W. G. Higley et al., was again called. Counsel for the parties present, and by agreement the case was set for trial on the 10th day of February next, at 10 a. m.

Court ordered a venire for special jury in the case.

FEBRUARY 10TH.

The case of Cronyn & Co. vs. W. H. Higley et al. was called up. Parties & counsel present.

The venire issued for a special jury to try this case was returned with a full panel annexed. The following-named jurors, viz: Joseph Brown, J. W. Johnson, D. T. Le Baron, Samuel Varney, Joseph R. Hall, W'm Broonhead, Jacob Peart, sen'r, A. R. Wright, D. B. Huntington, W'm Clayton, Ja's A. Browning, and Cha's F. Jones were called; all present.

The aforesaid jurors were each sworn and examined on their "voir dire" & examined by the parties, & being each & severally chosen, were duly sworn to try the case of Cronyn & Co. vs. W. G. Higley et al.

Plaintiffs declining to introduce evidence, the defendant, by his attorney, moved for a *new* suit.

The court overruled the motion; to which the defendants gave notice of excepting.

29 Richard Sloan, M. B. Bell, & Sam'l Dismore were called & sworn on the part of the defendants & testified.

The last-named witness being on the stand, defendant's counsel asked witness: "How long was the mill delayed on account of the breaking of the exhaust-pipe?"

Plaintiffs, by their counsel, objected to the question.

The court sustained the objection; to which ruling the defendants gave notice of excepting.

To question asked by the defendants: "How much do you believe the defendants were damaged by reason of the breaking of the exhaust-pipe?"

Plaintiffs objected for the reason that it gave the opinion of the witness instead of the facts.

The court sustained the objection, and the defendants gave notice of excepting.

WILLIAM WORLEY was called, sworn, and testified on part of the defendants.

Defendants' counsel asked this witness: "What damage, if any, the defendants sustained by reason of the breaking of the exhaust-pipe?"

To which plaintiffs objected on the ground that said witness had testified he did not see or examine the pipe; court sustained the objection; to which defendants gave notice of excepting.

30 James Meir, W'm Sanders and M. Dayton were called & sworn on part of the defendants.

JAMES MEIR being on the stand, the defendants, by their counsel, proposed to prove the price that defendants were receiving per thousand feet for sawing lumber, & the nature of the contract they were filling at the time of the bursting of the exhaust-pipe. To which plaintiffs, by their counsel, objected & the court sustained the objection; to which ruling the defendants gave notice of excepting.

J. H. Robertson was sworn & testified on the part of the defense.

Court adjourned till the 11th inst., 10 a. m., February 11th.

Ten o'clock a. m., court opened.

The case of Cronyn & Co. vs. W. G. Higley et al. was again called up. Parties and counsel present. Jury called; all present.

C. R. Barrett & Charles H. Bassett were sworn & testified on the part of the defense.

Sam'l Dinsmore was recalled by the defendants. Defendants asked witness: "What was the damage done to the defendants by loss of the use of the mill on account of the bursting of the exhaust-pipe?"

To which plaintiffs objected for the reason that it was only the
31 opinion of the witness, & that a foundation had not been laid for such an opinion. The court sustained the objection; to which defendants gave notice of excepting.

To the question by defendants: "What wages were the hands getting?" Plaintiffs objected, & the court sustained the objection; to which defendants gave notice of excepting.

Charles Crismon, jr., James Toms, Harry Hall, Jacob Stephens, C. R. Barret, & Charles H. Bassett were sworn & examined on the part of the plaintiffs.

Here the evidence closed.

The court charged the jury, who retired to their room in charge of the bailiff.

After deliberating, the jury returned into court, and being called & answering to their names, rendered the following verdict, to wit:

CRONYN & Co.
vs.
W. G. HIGLEY ET AL.

We, the jury in the above case, find for the plaintiffs ($1,600.41,) sixteen hundred and $\frac{41}{100}$ dollars.

(Signed) A. R. WRIGHT, *Foreman.*

The court ordered the verdict entered of record, & it was ordered & adjudged by the court that the plaintiffs, Cronyn & Co., have & recover of the defendants, W. G. Higley, Jo. F. Phippin, & Jo. F. Nounnan,
32 the sum of sixteen hundred $\frac{41}{100}$ dollars, together with the costs in this behalf expended, taxed at $, & that execution issue therefor.

The defendants by their counsel gave notice of appeal.

Appeal bond.

Know all men by these presents that we, W. G. Higley, Jo. F. Phippin, and J. F. Nounnan, as principals, & W'm Kiskadden, Jacob Ornstein, Charles Popper, N. S. Ransdhoff, W'm Showell, & Joseph R. Walker, as sureties, are held & firmly bound unto George Cronyn & Fred. T. Perris, in the penal sum of thirty-five hundred dollars, & for the payment of which sum, we bind ourselves, our heirs, executors, administrators, & assigns firmly by these presents, sealed with our seals and dated this 10th day of March, A. D. 1868.

Whereas on the 11th day of February, A. D. 1868, a judgement was rendered in the probate court of Salt Lake County, Utah Territory, in favor of the above-named Cronyn & Perris, under the style & name of Cronyn & Co., and against the above-bounden W. G. Higley, J. F. Phippin, & J. F. Nounnan, under the name & style of W. G. Higley et al., for the sum of sixteen hundred dollars and forty-one cents
33 ($1,600.41) & costs of suit, and from which said judgment the said Higley, Phippin, & Nounnan have taken an appeal to the district court, for the judicial district of Utah Territory, upon the points of error stated upon the records of said case:

Now the conditions of this obligation are such that if the said Higley, Phippin, & Nounnan shall prosecute their said appeal with effect, and that if their appeal be dismissed or the judgment below affirmed, they will comply with the judgment and orders made by the court below, and that they will pay all costs & sums of money that may be adjudged against them in the court appealed to, and will comply with the orders of that court, then this obligation shall cease & be null & void; but if otherwise, to be and remain in full force & virtue.

(Signed)	W. G. HIGLEY.	[L. S.]
"	J. F. PHIPPIN.	[L. S.]
"	J. F. NOUNNAN.	[L. S.]
"	W'M KISKADDEN.	[L. S.]
"	JACOB ORNSTEIN.	[L. S.]
"	CHARLES POPPER.	[L. S.]
"	N. S. RONSDHOFF.	[L. S.]
"	W'M SHOWELL.	[L. S.]
"	JOSEPH R. WALKER.	[L. S.]

Signed, sealed, & delivered in presence of—
O. F. STRICKLAND.

Filed & approved March 10th, 1868.

E. W. EAST,
Pro. Clerk.

34 TERRITORY OF UTAH,
Salt Lake County, ss:

I, the undersigned clerk of the probate court in & for the county aforesaid, certify that the foregoing & annexed is a faithful & correct transcript of the pleadings, record, including the appeal bond, in the case of Cronyn & Co. vs. W. G. Higley, J. F. Phippin, & J. F. Nounnan.

Given under my hand & the seal of said court this 25th day of September, A. D. 1868.

[L. S.]

E. W. EAST,
Pro. Clerk, S. L. County.

(Endorsement:) In appeal from pro. court S. L. C. Transcript. W. G. Higley et al. vs. Cronyn & Co. Filed nunc pro tunc as of Nov. 30th, 868. S. A. Mann. Clerk's fee for transcript, $10.

35 *Record of court.*

In appeal from the probate court of Salt Lake County.

W. G. HIGLEY ET AL.
vs.
CRONYN & CO.

NOV. 18TH, 1868.

W. G. Higley, through his attorneys, Strickland & Robinson, filed application for an order to the probate court to transmit all papers in the case, & asked for an order to prevent the issuance of execution from said court in the case where Cronyn & Co. were plaintiffs, & W. G. Higley et al. were defendants.

O. F. Strickland, esq., raised an objection to the jurisdiction of the probate court, and the final argument set for Friday, the 20th inst., at 2 p. m.

NOV. 20TH, 1868—2 P. M.

Ordered that the case be brought up on a writ of ce'tiorari, and that appellants file their bond within ten days from date if they seek to stay execution; and—

It was further ordered & adjudged by the court that the said W. G. Higley & Co. pay the cost in this behalf expended, taxed at fifteen $\frac{50}{100}$ dollars, & that execution issue therefor.

36 WED., *March 16th*, 1870.

Motion by Z. Snow, defendants' attorney, to dismiss.

Motion overruled by the court.

MONDAY, *Mar.* 21, 1870.

Case called and argued on both sides, the court holding the matter under advisement.

THURSDAY, *Mar.* 31, 1870.

Court reserved opinion until adjourned term.

MAY 16TH, 1870.

Motion to dismiss sustained, & suit dismissed at cost of plaintiffs. Notice given of appeal.

37 *Exceptions.*

In the 3rd district court of Utah Territory.

W. G. HIGLEY ET AL.
vs.
CRONYN & CO.

Now comes said plaintiffs, by their attorneys, & aver that there is error in the proceedings and judgement of the lower court in said case apparent upon the face of the record, in this, to wit:

1st. (First.) That the probate court of Salt Lake County, in which the case was tried below, had not jurisdiction of the subject-matter of such case.

2nd. (Second.) That the court erred in refusing to permit to be answered the questions propounded by the counsel of W. G. Higley—Samuel Dinsmore.

That the court erred in refusing to permit to be answered the question propounded by the counsel for the defendant to William Worley.

That the court erred in refusing to admit the testimony of James Mier.

38 Wherefore they pray that the proceedings and judgment of the court below may be quashed.

R. N. BASKIN,
R. H. ROBINSON,
Att'ys for Plaintiffs.

(Endorsement:) W. G. Higley et al. vs. Cronyn & Co. Exceptions.

Notice of appeal.

CRONYN & PERRIS *vs.* W. G. HIGLEY ET AL. } Suit heretofore tried in probate court.

To Z. SNOW and HOSEA STOUT,
Att'ys for Cronyn & Perris.

GENTLEMEN: You will please take notice that an applicatiou will be made to the district court of the third judicial district, Utah Territory, for an order in the matter of the above-entitled cause, requiring the probate court of Salt Lake County to transmit to the said district court all of the original pleadings and filed in the said cause for the

39 purpose of having said matter tried in the said court de novo, or as if the said cause had originally been commenced therein, and for the order staying all further doings, acts or things in relation to the said matter in the said probate court, and that such application will be heard by said court on Wednesday, the 18th inst., at ten o'clock of said day.

Yours,

STRICKLAND & ROBINSON, & BASKIN,
Attorneys for said Defendants.

Served personally on Z. Snow & Hosea Stout, attorneys for Cronyn & Perris, this Monday morning, Nov. 16th, 1868, by R. H. Robertson.

(Endorsement:) In district court. Cronyn & Perris vs. W. G. Higley et al. Notice, &c.

I accept service of the within notice, this 16th day of Nov'r, 1868.
S. & R., & B.

40 *Appeal bond.*

Know all men by these presents that we, J. F. Nounnan, J. F. Phippin, & W. G. Higley, as principals, and L. Cohn & W. Showell, as sureties,

are held & firmly bound unto George Cronyn & Fred. T. Perris in the penal sum of thirty-five hundred dollars, & for the payment of which sum we bind ourselves and our legal representatives firmly by these presents, sealed with our seals & dated this 25th day of Nov'r, 1868.

Whereas heretofore, to wit, on the 11th day of February, 1868, a judgement was rendered in the probate court of Salt Lake County, Utah Terr'y, for the sum of sixteen hundred dollars and forty-one cents in favor of the above-named Cronyn & Perris, & against the above-bounden Higley, Nounnan, & Phippin, in a suit then & there pending in which the said Cronyn & Perris were plaintiffs and the above-bounden parties as defendants, & whereas on the 20th day of November, 1868, an appeal was granted in the said cause by the district court of the 3rd judicial district of Utah Territory, by certiorari, and by order file bond in ten days to stay execution.

Now the condition of this obligation is such that in case the above-bounden parties shall prosecute their appeal with effect and that
41 if the appeal be dismissed & the judgement below affirmed, they will comply with the judgement & orders made by the court below, and that they will pay all costs and sums of money that may be adjudged against him in the court appealed to, and will comply with the orders of that court, then this obligation shall cease & be null & void; but if otherwise to be & remain in full force and virtue.

W. G. HIGLEY. [L. S.]
L. COHN. [L. S.]
W. SHOWELL. [L. S.]

Approved Nov. 30th, 1868.

PATRICK LYNCH, *Clerk, &c.*

(Endorsement:) Cronyn and Perris vs. W. G. Higley et al. Appeal bond. Filed Nov'r 30th, 1868. P. Lynch, clerk, &c.

42 *Certiorari.*

TERRITORY OF UTAH:

Third judicial district court. Hon. C. C. Wilson, judge.

GEORGE CRONYN ET AL. *ads.* W. G. HIGLEY ET AL. } Certiorari.

Now comes the above-named George Cronyn et al. & moves the court to dismiss this case for the reason that it issued without the authority of law, & that no certiorari issue or can be allowed in cases where an appeal lies.

Z. SNOW,
H. STOUT,
Attor'ys for Plaintiffs.

(Endorsement:) Certiorari. George Cronyn et al. ads. W. G. Higley et al. Motion to dismiss. Filed March 16th, 1870. S. A. Mann, cl'k. Snow & Stout, for Cronyn & Co.

43 In the district court of the 3rd judicial district of the Territory of Utah.

W. G. HIGLEY ET AL.
vs.
CRONYN & Co.

I, S. A. Mann, clerk of the 3rd judicial district court of Utah Territory, do hereby certify the foregoing to be a full, true, & correct transcript of the transcript from probate court of Salt Lake County, record of court, bill of exceptions, notice of appeal, appeal bond, & certiorari, in the above-entitled case, as the same appears on file & of record in my office.

U. S. AMER. 3RD DISTRICT COURT, TERRITORY OF UTAH.

Witness my hand and official seal this 3rd day of June, A. D. 1870.

S. A. MANN, *Clk.*
By C. H. FORCE.

43½ (Indorsed :) Supreme court Utah Territory. W. G. Higley et al. vs Cronyn & Co. Transcript. Filed June 6th, 1870. S. A. Mann, cl'k.

44 Afterward, on Tuesday, the 4th day of January, A. D. 1871, the same being a day of the regular October term, A. D. 1870, the supreme court of the Territory met pursuant to adjournment in the city of Salt Lake—

Present, their honors James B. McKean, chief justice, and Cyrus M. Hawley and O. F. Strickland, associate justices ; M. T. Patrick, U. S. marshal ; Cha's H. Hempsted, U. S. attorney.

Attest :

C. MYRON HAWLEY, *Clerk.*

In the matter of the appeal from the district court of the 3rd judicial district, wherein Fred. T. Perris, surviving partner of George Cronyn & Fred. T. Perris, partners in business by the style of George Cronyn & Co., are appellants, and William G. Higley, Joseph F. Nounan, and Joseph F. Phippin, are appellees.

45 On this said 4th day of January, A. D. 1871, the same being a day in the said October term, A. D. 1870, aforesaid, the said case came on to be heard—Z. Snow, for appellants, and R. N. Basken for appellees.

And the same having been heard upon briefs and the arguments of counsel for the respective parties, and, after argument, was submitted ; and the court took the case under advisement.

Afterwards, to wit, on the 14th day of March, A. D. 1871, the same being a day in the said October term, A. D. 1870, of said court, the following proceedings were had, and entered of record, to wit :

In the matter of the appeal from the district court of the 3d judicial district, wherein Fred. T. Perris, surviving partner of George Cronyn & Fred. T. Perris, partners in business by the style of George
46 Cronyn & Co., are appellants, and William G. Higley, Joseph F. Nounan, and Joseph F. Phippin, and appellees.

On this 14th day of March, A. D. 1871, the same being a day in the

October term, A. D. 1870, the opinion of the court in the said case was read by the Honorable Cyrus M. Hawley, associate justice, whereby the judgement of the said district court was affirmed; and, therefore, upon the consideration and judgement of the said supreme court, it was adjudged & ordered that the judgement of the district court of the 3rd judicial district be and the same is in all respects confirmed; and it is further considered, adjudged, and ordered that the said George Cronyn & Co., appellants, pay the costs of said appeal, and that execution issue therefor.

47 The United States of America. Supreme Court of the United States, in error to the supreme court of the Territory of Utah.

FRED. T. PERRIS, SURVIVING PARTNER OF George Cronyn & Co.,
vs.
WILLIAM G. HIGLEY, J. F. PHIPPIN, AND Joseph F. Nounnan. } In error.

Now comes Fred T. Perris, surviving partner of the late firm of George Cronyn & Co., the said George Cronyn having departed this life, and says there is a manifest error in the records and proceedings in this case, in this, viz: By law the probate courts of Utah Territory have jurisdiction in civil case at law not arising under the Constitution and laws of the United States.

The supreme court of the Territory of Utah therefore erred in affirming the judgement of the district court. He therefore prays this honorable court to reverse the judgement of the said supreme court and
48 order the supreme court of the Territory to reverse the judgment of the district court and render judgement therein for the plaintiffs in error in this case.

Z. SNOW & E. D. HOGE,
Attorneys for Pl'tiff.

48½ (Indorsed:) The United States of America. Supreme Court of the United States, in error to the supreme court of the Territory of Utah. Fred. T. Perris, surviving partner of George Cronyn & Co., vs. William G. Higley, J. F. Phippin, and Joseph F. Nounnan. Assignment of errors. Z. Snow for pl'tiff.

49 UNITED STATES OF AMERICA,
Territory of Utah.

Supreme Court.

I, C. Myron Hawley, clerk of the supreme court of the United States in and for the Territory of Utah, certify that, in obedience to the commands of the writ of error hereto attached, I return said original writ with the citation therein issued, containing the acknowledgement of service therein endorsed, and a transcript in the record of the writ of error and proceedings of the case mentioned.

And I further certify that the foregoing is a full, complete, and correct transcript of the record and proceedings in said case on file in my office, and a true copy of the assignment of errors and copy of the supersedeas bond also on file in my office.

In testimony hereof I have hereunto set my hand and affixed the seal

of said court in Salt Lake City, in said Territory, this 10th day of November, A. D. 1871.

[SEAL.]

C. MYRON HAWLEY, *Clerk*.
By BENTHAM FABIAN, *Dep'y*.

50 THE UNITED STATES OF AMERICA.

Supreme Court of the United States.

FRED. T. PERRIS, SURVIVING PARTNER OF George Cronyn & Fred. T. Perris, partners in business by the style of George Cronyn and Co., plaintiffs in error.
vs.
WILLIAM G. HIGLEY, JOSEPH F. NOUNNAN, and Joseph F. Phippin, defendants in error.

Know all men by these presents that we, Zerubbabel Snow and George Goddard, of the city & county of Salt Lake and Territory of Utah, are held and firmly bound unto the above-named William G.
51 Higley, Joseph F. Nounnan, and Joseph F. Phippin in the sum of two hundred and fifty dollars, to be paid to the said William G. Higley, Joseph F. Nounnan, and Joseph F. Phippin, their administrators or executors; to which payment, well and truly to be made, we bind ourselves & each of us, jointly & severally, and our & each of our heirs, executors, & adminstrators firmly by these presents, sealed with our seals and dated this 2nd day of November, 1871.

The condition of the foregoing obligation is such that, whereas the above-named Fred. T. Perris, surviving partner of George Cronyn and Fred. T. Perris, late partners in business by the style of George Cronyn & Co., has prosecuted a writ of error to the Supreme Court of the United States from the supreme court of the Territory Utah, to reverse a judgement of the said supreme court of the Territory of Utah, rendered on the 14th day of March, 1871, in a suit therein, wherein Fred. T. Perris, surviving partner of George Cronyn and Fred. T. Perris, partners in business by the style of George Cronyn & Co., were plaintiffs in
52 error, and William G. Higley, Joseph F. Nounnan, and Joseph F. Phippin are defendants in error:

Now, therefore, if the above-named plaintiffs in error shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to be in full force and virtue.

Z. SNOW. [L. S.]
GEORGE GODDARD. [L. S.]

(Indorsed:) Supreme Court of the United States. Fred. T. Perris, surviving partner, &c., vs. William G. Higley, et. al. Supersedeas bond. Approved Nov. 4, 1871. Ja's B. McKean, chief justice, &c.

(Indorsement on cover:) No. 423. Fred. T. Perris, surv'g partner of George Cronyn & Fred. T. Perris, as George Cronyn & Co., plaintiff in error, vs. William G. Higley, J. F. Nounnan, & Jos. F. Phippin. Utah Terr'y sup. c't. Filed 27 November, 1871.

IN THE

Supreme Court of the United States.

No. 188.—December Term, A. D. 1872.

FRED. T. PERRIS, SURVIVING PARTNER OF GEORGE CRONYN AND FRED. T. PERRIS, AS GEORGE CRONYN AND COMPANY, Plaintiff in Error,

vs.

WILLIAM G. HIGLEY, J. F. NOUNNAN, AND JOSEPH F. PHIPPIN.

Brief for Plaintiff in Error.

Issue was joined in the Probate Court of Salt Lake County, Utah Territory, in January, 1868, between plaintiffs in error and defendants, in a common law action, wherein plaintiffs sought to recover from defendants the sum of fifteen hundred dollars, with interest, upon a promissory note made and executed by defendants to plaintiffs. Upon the verdict of the jury judgment was entered in favor of plaintiffs for $1,600.41.

In November, 1868, the defendants applied to the Third District Court of Utah Territory for an order to quash the proceedings and judgment of the Probate Court of Salt Lake County, on the ground "that the said probate court had not jurisdiction of the subject-matter of such case."

The district court granted the order applied for, and the supreme court of the territory affirmed the judgment of the district court in this behalf.

The only question presented here is, had the Probate Court of Salt Lake County jurisdiction of the subject-matter of the action?

Section six of the act of Congress "to establish a territorial government for Utah," approved September 9th, 1850, provides, "that the legislative power of said territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and of the provisions of this act. * * * * All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect."

Section nine of the same act of Congress provides, "that the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. * * * The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace shall be as limited by law. Provided, that justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars, and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction."

Section 29 of an act of the Governor and the Legislative Assembly of the Territory of Utah, entitled "An act in relation to the judiciary," approved January 19, 1855, provides that "the several probate courts in their respective counties have power to exercise original jurisdiction, both civil and criminal, and as well in chancery as at common law, when not prohibited by legislative enactment; and they shall be governed in all respects by

the same general rules and regulations as regards practice as the district courts."

No law has ever been enacted by Congress annulling or disapproving of the territorial statute last cited.

It will scarcely be claimed that the establishment and definition of jurisdiction of courts of record is not "a rightful subject of legislation," or that territorial legislation to that end with respect to local courts, is inconsistent with the Constitution of the United States. It remains, then, only to inquire if the territorial statute conferring common-law and chancery jurisdiction upon probate courts is inconsistent with the provisions of the act of Congress heretofore referred to.

It is submitted that Congress, in declaring that the jurisdiction of the probate courts shall be "as limited by law," intended a law to be hereafter enacted either by Congress or by the territorial legislature, and that the territorial legislature, in conferring upon the probate courts common-law jurisdiction to an unlimited extent, did no more than it was empowered by the act of Congress to do. It is further submitted that the failure of Congress to subsequently annul this act of the territorial legislature by a disapproving statute validates the exercise of power by the territorial legislature, even if it had been originally of doubtful validity.

It was contended in the court below that as the term "probate" court is usually, if not universally, applied only to tribunals established for the transaction of probate business exclusively, therefore Congress, in using the words "as limited by law," intended not statutory enactments alone, but "the law" in its broader sense, wherein the constructions of eminent writers and the interpretation of courts are considered as part of "the law." It is perhaps a sufficient answer to this to suggest that a grant of power from the law-making body, accompanied by a reservation that such power so granted may afterwards

be "limited by law," means a law to be thereafter enacted, and not a "judicial construction of existing enactments."

It was also contended below that, as the section of the act of Congress heretofore quoted, confers original chancery and common-law jurisdiction upon the district courts, it therefore, by necessary implication, excludes such jurisdiction from all other courts under the application of the maxim, "*Expressio unis est exclusio alterius.*" To this we reply that the act of Congress referred to is not a penal statute, and the maxim does not apply.

We submit, in conclusion, that the opinion of this court in the case of Clinton et. al. vs. Englebrecht et. al., No. 379, December term, 1871, covers the question at issue here, and entitles the plaintiff in error to a reversal of the judgment of the Supreme Court of Utah Territory and an affirmance of the judgment of the Probate Court of Salt Lake County. 1 Pet. 543 30 Cal 580, 8

CURTIS J. HILLYER,
THOMAS FITCH,
of Counsel for Appellants.

Supreme Court of the United States.

No. 188.

Fred. T. Perris, surviving partner of Geo. Cronyn & Co.,

vs.

William G. Higley, et. al.

In Error to the Supreme Court of the Territory of Utah.

Defendant's Brief.

Robert N. Baskin, O. F. Strickland,

of Counsel for Defendants.

In the Supreme Court.

Fred. T. Perris, Surviving Partner of George Cronyn & Co., Plaintiff in Error, vs. William G. Higley, et al., Defendants.	In Error to the Supreme Court of Utah Territory.

Defendant's Brief.

The transcript shows that on the 16th day of March, 1870, the plaintiff, in error, filed in the District Court a motion to dismiss the case. (See page 13 of transcript.)

The following minutes of the Clerk appear in the transcript, to wit: "Wednesday, March 16th, 1870, motion "by Z. Snow, Defendant's Attorney, to dismiss. Motion "overruled by the Court."

Monday, March 21, 1870.

"Case called and argued on both sides; the Court hold-"ing the matter under advisement."

Thursday, March 31, 1870.

"Court reserved opinion until adjourned Term."

May 16, 1870.

"Motion to dismiss sustained, and suit dismissed at costs "of Plaintiffs. Notice given of appeal." (See page 13 of transcript.)

The above are the minutes of the proceedings in the District Court, and besides these minutes there is nothing showing what the judgment of the District Court was. The title of the case in that Court was William G. Higley, et. al. vs. Cronyn & Co. (Page 13 of transcript.)

The judgment of the District Court, as appears from the record, or rather the minutes of the Clerk, was the dismissal of the case, on motion of Cronyn & Co., at the costs of William G. Higley, et. al.

From this judgment Fred. T. Perris, surviving partner of Cronyn & Co., appealed to the Supreme Court of the Territory, and the last named Court affirmed the judgment of the District Court, and this judgment of affirmance the plaintiff in error asks this Court to reverse.

The plaintiff in error is estopped from complaining of the judgment, because it was rendered on the motion of his own Attorney, at the costs of William G. Higley, et. al., defendants in error, as appears from the record.

Such being the case a discussion of any other questions would be a fruitless waste of the time of the Court.

ROBERT N. BASKIN, O. F. STRICKLAND,
of Counsel for Defendants.